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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,942	10/02/2001	Royce W. Johnson	VAC.483	8824

30159 7590 10/23/2003

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EXAMINER	
TRUONG, LINH T	
ART UNIT	**PAPER NUMBER**
3761	9

DATE MAILED: 10/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/937,942	Applicant(s) JOHNSON, ROYCE W.	
	Examiner Linh T Truong	Art Unit 3761	

-- The MAILING DATE of this communication appears n the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *20 August 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5 and 7-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5 and 7-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections -35 USC ~ 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Argenta et at. 'WO 94/20041 in view of Collyer et al. '5,973,221.

For claim 1, Argenta et al. teach a wound treatment apparatus comprising a porous pad 610, a tube 611 with first end in fluid communication with the pad and a second end connected to a vacuum 25, and a wound drape (612) (figure 1). Argenta et al., however, do not teach a porous pad predisposed with a wound healing factor. Pre--medicated dressings are well known in the art; it is obvious to one of ordinary skill in the art to have wound healing factors incorporated within the dressings because they come in direct contact with the wound, and therefore, would promote faster healing of wounds. For example, Collyer et al. teaches a porous pad that can be impregnated with antiseptic and/or other med icament (cot. 3, lines 53-56). Therefore it would be obvious to one with ordinary skill in the art to substitute the porous pad of Argenta for the porous pad of Collyer et al. for more efficient wound healing.

Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Argenta et at. 'WO 94/20041 in view of Collyer et al. '5,973,221 and in further view of Gibbins '6,355,858.

For claims 2-5, both Argenta et al. and Collyer et at. do not teach that the wound healing factor comprises of basic fibroblast growth factor and an anti-microbial that is an antibiotic. Since it is well known in the art that wounds, especially burns, are a destruction of skin tissue, wound healing would occur much faster when skin tissue regrows. Basic fibroblast growth factor promotes the growth of the endothelial cells of the skin; thus, it would be effective at increasing growth rate of new skin. It is also well known in the art that anti-microbial such as an antibiotic inhibit infections of wounds. Gibbons teach incorporating basic fibroblast growth factor and an anti-microbial such as streptomycin (cot. 6, line 49- col.7, line l4) as one of many active ingredients that can be incorporated or grafted onto a dressing. And since Collyer et al. teach a pad that can be incorporated with medicament, it would be obvious to one with ordinary skill in the art to provide the combined inventions of Argenta et at. and Collyer et al. with a porous pad that is predisposed with basic fibroblast growth factor and streptomycin to inhibit the growth of harmful microbials and promote faster wound heating.

Claims l and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fleischmann '6,398,767 in view of Collyer et al. '5,973,221.

For claims I and 7, Fleischmann teach a wound treatment apparatus comprising a porous pad 12 and a tube 16 with first end in fluid communication with the pad and a second end connected to a vacuum 30, and a wound drape (14) (figure 1). Fleischmann, however, does not teach a porous pad predisposed with a wound healing factor. Pre-medicated dressings are well known in the art; it is obvious to one of ordinary skill in the art to have wound healing factors incorporated within the dressings because they come in direct contact with the wound, and therefore, would promote faster healing of wounds. For example, Collyer et al. teaches a porous pad that can be impregnated with antiseptic and/or other medicament (cot. 3, lines 53-56). Therefore, it would be obvious to one with ordinary skill in the art to substitute the porous pad of Fleischmann for the porous pad of Collyer et al. for more efficient wound healing.

For claims 8-10, Fleischmann teaches the delivery of wound healing factors such as antiseptics and antibiotics (col. 2, line 66- col.3, line 1) onto the pad through a delivery tube 16 instead of via injection through the wound drape onto the porous pad. Fleischmann's method can be used to deliver different wound healing factors or more of the same wound heating factors in addition to the wound healing factor that is predisposed on Collyer et al.'s porous pad. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to inject the wound healing factor onto the porous pad because Applicant has not disclosed that this procedure provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have

expected Applicant's invention to perform equally well with the wound heating factors delivered fluidically through a tube onto a porous pad because the porous pad will still soak up the additional wound healing factors so that the healthcare personnel/ patient would not have to change the porous pads when the predisposed wound healing agents in the pad are used up.

Response to Arguments

Applicant's arguments filed 20 August 2003 have been fully considered but they are not persuasive. In response to Applicant's argument that the present invention claims a pad "predisposed" with a wound healing factor and not "impregnated," the examiner would like to point out that the definition of predispose, according to *Merriam-Webster's Collegiate Dictionary, 10th edition*, is: to make susceptible. Thus, the examiner takes the position that the pad of Collyer is "predisposed" to a wound healing factor, because the pad was already susceptible to medication being added or impregnated.

In response to Applicant's argument that Collyer et al. do not teach basic fibroblast growth factor (bFGF), applicant is correct. There is, however, a rejection made for claims 2-5 with the combined references of Argenta, Collyer et al., and Gibbins. The Examiner apologizes for not including a heading for the rejection, but if Applicant rereads the rejection that was sent out on 19 February 2003, the first paragraph on page 3 starting with "For claims 2-5...," Gibbins is

stated as teaching incorporating bFGF onto a dressing. Gibbins is also listed in the PTO-892 that was sent out with that non-final rejection, paper no. 3.

In response to Applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Examiner disagrees that there is no motivation to combine the teachings of Argenta and Collyer. Both patents teach wound healing pads, and thus, provide the motivation to combine. Furthermore, Applicant does not specifically claim "reepithelization by predisposing growth factors into a negative pressure system" as stated on page 13, lines 13-15 of Applicant's response. Thus, the rejections for claims 1-5 and 7 are maintained.

The Examiner also disagrees that there is no motivation to combine the teachings of Fleischmann and Collyer. Both patents teach wound healing pads, and thus, provide the motivation to combine. Furthermore, Applicant does not specifically claim "reepithelization by predisposing growth factors into a negative pressure system" as stated on page 14, lines 6-8 of Applicant's response. Thus, the rejections for claims 1-5 and 7-10 are maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linh Truong whose telephone number is 703-605-4974. The examiner can normally be reached on Mondays-Fridays for 8:30am-5:30pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Linh Truong
L.T.

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SUPERVISORY PATENT EXAMINER
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